

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-15 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for mouthwash solutions containing potassium nitrite and sulfur does not reasonably provide enablement for mouthwash solutions containing potassium nitrite, sulfur and activated carbon. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention commensurate in scope with these claims.

The nature of the invention:

The invention is directed to mouthwashes and methods of preparing the same containing potassium nitrate, sulfate and activated carbon added to a water permeable sac, immersed in water, heated and cooled, wherein the product is the solution outside of the sac.

The state of the prior art and the predictability or lack thereof in the art:

The prior art of record does not appear to disclose the use of a water permeable sac containing the mixture above to prepare a mouthwash. As such, predictability in the art appears to be low.

The amount of direction or guidance present and the presence or absence of working examples:

The Specification provides methods of preparing the mouthwashes, however, there is no indication as to the components of the final product.

The breadth of the claims and the quantity of experimentation needed:

The claims are broad in that they do not indicate what is contained in the final solution, however, they do include in their scope the presence of activated charcoal in the final product. However, there is no indication that activated charcoal is water soluble (See Merck Index, Carbon Amorphous (2006). As such, since there is no teaching as to how the final product will contain active charcoal, it appears that one of ordinary skill in the art would be required to do undue experimentation in order to prepare a mouthwash having the same while using a sac that is water permeable and removed once the process is completed.

The Examiner has duly considered the Applicant's arguments but deems them unpersuasive.

The Applicant argues that none of the claims recite a mouth containing potassium nitrate, sulfur and activated carbon. However, claims 4 and 5 indicate that the water contains a solution of the mix or contents of the sac. As such, contrary to the Applicant's arguments the claims as written purport to include with their scope a mouth wash which contains potassium nitrate, sulfur and activated carbon. Since activated charcoal is not water soluble, the claims are not enabled.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 5-7 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Jenkins.

Jenkins expressly discloses a cocktail containing whisky or bourbon and gun powder made with nitrate, sulphur and charcoal, the old-fashion kind, falling within the scope of applicant's claims (Page 2 of 4).

Alternatively, at the very least the claimed invention is rendered obvious within the meaning of 35 USC 103, because the prior art discloses products and uses that contain the same exact ingredients/components as that of the claimed invention. See In re Fitzgerald, 619 F.2d 67, 205 USPQ 594 (CCPA 1980). See also In re May, 197 USPQ 601, 607 (CCPA 1978). Lovold (US Pat. 3,660,546) is cited herein as extrinsic evidence that gunpowder contains potassium nitrate, activated charcoal and sulphur in the ratio of 75:15:10 (Columns 5, 6).

Claims 2, 15 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Borghere.

Borghere expressly discloses a paper cartridge containing black gunpowder falling within the scope of applicant's claims (Page 1 of 2).

Alternatively, at the very least the claimed invention is rendered obvious within the meaning of 35 USC 103, because the prior art discloses products and uses that contain the same exact ingredients/components as that of the claimed invention. See In re Fitzgerald, 619 F.2d 67,

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205 USPQ 594 (CCPA 1980). See also *In re May*, 197 USPQ 601, 607 (CCPA 1978). Lovold (US Pat. 3,660,546) is cited herein as extrinsic evidence that gunpowder contains potassium nitrate, activated charcoal and sulphur in the ratio of 75:15:10 (Columns 5, 6).

Conclusion

A facsimile center has been established in Technology Center 1600. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. The telecopier number for accessing the facsimile machine is 571-273-8300.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frank Choi whose telephone number is (571)272-0610. Examiner maintains a compressed schedule and may be reached Monday, Tuesday, Thursday, Friday, 6:00 am – 4:30 pm (EST).

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Johann R. Richter, can be reached at (571)272-0646. Additionally, Technology Center 1600's Receptionist and Customer Service can be reached at (571) 272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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